

EXHIBIT 22

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,)
Plaintiff,)
v.) Case No.
UBER TECHNOLOGIES, INC.;) 3:17-cv-00939-WHA
OTTOMOTTO LLC;)
OTTO TRUCKING,)
Defendants.)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF EDWARD RUSSO

WEDNESDAY, DECEMBER 20, 2017

REPORTED BY:

PAUL J. FREDERICKSON, CCR, CSR

JOB NO. 2771335

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1 Q. Okay. You mentioned that you were 08:09:38
2 doing research and assessment. Can you tell me 08:09:56
3 what that means? 08:09:58

4 A. Sure. It involved doing research 08:09:59
5 into competitors, both in the ridesharing 08:10:02
6 marketplace and in the autonomous vehicle 08:10:07
7 development marketplace. 08:10:09

8 Q. And why was doing research into 08:10:11
9 competitors important to Uber? 08:10:13

10 A. It was my understanding that Uber 08:10:17
11 wanted to have as good an assessment as they 08:10:19
12 could have regarding where its competitors 08:10:20
13 stood in the marketplace so they could gauge 08:10:25
14 its -- you know, where they stood vis-a-vis the 08:10:28
15 other companies. 08:10:31

16 Q. Are you still doing that role? 08:10:33

17 A. No. 08:10:33

18 Q. Do you feel like you were 08:10:38
19 successful in carrying out the task that Uber 08:10:40
20 assigned to you in that role? 08:10:42

21 A. I would say yes. We -- I carried 08:10:47
22 out those tasks. Come springtime, there seemed 08:10:50
23 to be less interest in it, and my 08:10:55
24 responsibilities shifted more to investigations 08:10:57
25 and then the Insider Risk Program. 08:10:59

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1 MR. UMHOFFER: Quick clarification. 08:38:14

2 When they spoke, current employees of 08:38:16

3 those competitors or former employees of 08:38:18

4 those competitors. Just -- 08:38:21

5 MR. KAPGAN: Okay. 08:38:22

6 MR. UMHOFFER: I'm not sure it 08:38:23

7 makes a difference to your answer. 08:38:26

8 THE WITNESS: No. 08:38:28

9 BY MR. KAPGAN: 08:38:28

10 Q. Did you understand that in my 08:38:29

11 question I was asking about existing employees 08:38:30

12 of those competitors? 08:38:33

13 A. I assumed that, but no, I didn't. 08:38:36

14 Q. Okay. 08:38:36

15 So let me ask the follow-on 08:38:41

16 question. 08:38:43

17 A. Yeah. 08:38:44

18 Q. Are you aware of anyone at Uber 08:38:44

19 ever attempting to gather research or 08:38:49

20 intelligence about a competitor of Uber's by 08:38:51

21 speaking to former employees of those 08:38:54

22 competitors? 08:38:58

23 A. No. 08:39:02

24 Q. Are you aware of anyone at Uber 08:39:06

25 ever speaking to former Waymo or Google 08:39:13

1	about that conversation?	08:41:39
2	A. No. It was pretty short. I mean,	08:41:42
3	we weren't in the car that long.	08:41:44
4	Q. When was that, approximately?	08:41:45
5	A. I do not remember.	08:41:50
6	Q. Was it this year?	08:41:53
7	A. Yes. It would have been -- yeah,	08:41:56
8	I honestly don't remember. It would have been	08:41:58
9	back in the spring maybe, February, March,	08:42:00
10	perhaps.	08:42:03
11	Q. Are you aware of whether there are	08:42:03
12	any former Google or Waymo employees that are	08:42:23
13	employed by Uber?	08:42:24
14	A. By name, no. I assume there might	08:42:29
15	be, but I don't know any.	08:42:31
16	Q. And I take it you don't know	08:42:36
17	whether anyone at Uber has ever spoken to any	08:42:37
18	such employees, that is, former Google or Waymo	08:42:41
19	employees, about activities at Google or Waymo?	08:42:46
20	A. No.	08:42:51
21	Q. So going back to what we started	08:43:00
22	out with, you mentioned that you've been	08:43:02
23	involved in research and assessment, and we	08:43:03
24	talked about research. Is assessment something	08:43:06
25	different?	08:43:07

1 A. It's a natural follow-on. You do 08:43:14
2 the research, and then it was part of my job to 08:43:14
3 draw some likely conclusions. I'll give you an 08:43:17
4 example. 08:43:20

5 When I first was hired, one of the 08:43:22
6 first projects I had was to look at some of the 08:43:25
7 key personalities in -- I think it was Google X 08:43:29
8 at the time prior to Waymo. So I did 08:43:34
9 open-source research on, you know -- the key 08:43:36
10 personality at the time was a guy named Chris 08:43:38
11 Urmson. This would have been back probably 08:43:42
12 September or so of 2016. 08:43:44

13 There was a lot of articles and 08:43:46
14 blog features on him. One of them included -- 08:43:49
15 allegedly, there was a tension between him and 08:43:54
16 a man named John Krafcik who had been hired to 08:43:56
17 oversee the program. So you take that 08:44:01
18 open-source, summarize it, and then, you know, 08:44:03
19 the assessment would be, you know, if these 08:44:06
20 two -- obviously, if these two can't figure out 08:44:08
21 a way to live and work together, you know, 08:44:10
22 there could be a parting of the ways. And, you 08:44:12
23 know, Google either loses a new executive or 08:44:15
24 they lose a -- a key engineer. 08:44:18

25 Q. And was part of that assessment to 08:44:23

1 Q. Do you know if Mr. Gicinto did? 09:12:22

2 A. I believe so, yeah. 09:12:23

3 Q. What do you understand that 09:12:25

4 Mr. Gicinto worked with Ric Jacobs on? 09:12:28

5 A. I can't say specifically. I mean, 09:12:32

6 I understand that they -- they worked on a few 09:12:35

7 things together and -- but I -- nothing I had 09:12:37

8 insight into. 09:12:42

9 Q. You don't know any of the details? 09:12:43

10 A. No. 09:12:43

11 Q. While you've been at Uber, have 09:12:59

12 you ever witnessed any activity that you 09:12:59

13 believed or considered was either unethical or 09:13:00

14 illegal? 09:13:03

15 A. Can you be more specific? Any 09:13:05

16 activity that was unethical? 09:13:07

17 MR. UMHOFFER: And I'm going to 09:13:11

18 object to this question again as beyond 09:13:12

19 the scope of the judge's order. If you 09:13:13

20 want to limit it to the topics in the 09:13:15

21 judge's order on this deposition, then 09:13:18

22 you can answer. 09:13:20

23 BY MR. KAPGAN: 09:13:20

24 Q. So let me ask it again. 09:13:22

25 While you've been at Uber, have 09:13:26

1 you ever witnessed any activity by either Uber 09:13:28
2 personnel or their contractors or vendors that 09:13:34
3 you believed or considered to be either 09:13:38
4 unethical or illegal? 09:13:42
5 A. No. 09:13:44
6 MR. UMHOFFER: Same objection. 09:13:44
7 Just let me object first. 09:13:45
8 THE WITNESS: Sorry. 09:13:48
9 Please go ahead. 09:13:49
10 BY MR. KAPGAN: 09:13:50
11 Q. That's a no? 09:13:50
12 Do you have any understanding of 09:14:00
13 the circumstances of Mr. Jacobs' resignation? 09:14:01
14 A. Some. He had -- they -- as I 09:14:09
15 understood it, he had had performance issues. 09:14:14
16 So basically he was removed as a manager and 09:14:20
17 made an individual contributor. 09:14:22
18 Q. Is that your understanding of why 09:14:29
19 he resigned? 09:14:30
20 A. I believe that was the big cause, 09:14:36
21 yes. 09:14:37
22 Q. Did you read his letter that -- 09:14:38
23 the letter that his attorney sent to Uber 09:14:39
24 outlining his complaints? 09:14:42
25 A. The first time I saw that letter 09:14:43

1	Q.	Okay.	09:16:01
2		I take it you disagree that SSG	09:16:26
3		frequently engaged in fraud and theft?	09:16:33
4	A.	You take it that I disagree with	09:16:38
5		that? Yes, I do disagree with that.	09:16:39
6	Q.	Do you know whether SSG employed	09:16:42
7		third-party vendors to obtain unauthorized data	09:16:47
8		or information?	09:16:49
9	A.	Not to my knowledge.	09:16:50
10	Q.	Mr. Jacobs made some allegations	09:16:58
11		with respect to the Marketplace Analytics	09:17:00
12		group. Are you familiar with that?	09:17:03
13	A.	The group or the allegations?	09:17:04
14	Q.	The allegations.	09:17:06
15	A.	You would have to go through them	09:17:09
16		again, and I -- again, like I said, I don't	09:17:11
17		know much about Marketplace Analytics, so the	09:17:13
18		allegations he made, I don't know.	09:17:16
19	Q.	Well, one of the things that	09:17:19
20		Mr. Jacobs said was that Marketplace Analytics	09:17:21
21		exists expressly for the purpose of acquiring	09:17:24
22		trade secrets, code base and competitive	09:17:27
23		intelligence.	09:17:31
24		Do you remember those allegations?	09:17:32
25	A.	Yep. Yes, I do.	09:17:34

1 Q. Do you have any basis to say one 09:17:36
2 way or the other whether that's true? 09:17:38
3 A. None whatsoever. 09:17:40
4 Q. You don't know one way or the 09:17:42
5 other; right? 09:17:44
6 A. I don't. I don't believe it to be 09:17:44
7 true, but I don't know. 09:17:46
8 Q. Do you know whether Marketplace 09:17:55
9 Analytics derived business metrics of supply, 09:17:58
10 demand and the function of applications from 09:18:00
11 major ride-sharing competitors globally? 09:18:04
12 A. I don't know. I don't know what 09:18:07
13 Marketplace Analytics does on a day-to-day 09:18:09
14 basis. 09:18:12
15 Q. Did you have interactions with 09:18:17
16 Craig Clark? 09:18:19
17 A. Yes. 09:18:22
18 Q. And what was Craig Clark's role at 09:18:23
19 the company as far as you know? 09:18:27
20 A. He was an in-house attorney, and 09:18:30
21 he was assigned, if you will, to the security 09:18:32
22 team. 09:18:36
23 Q. Was he the primary attorney within 09:18:38
24 the security team? 09:18:41
25 A. That's my understanding. 09:18:43

1 Q. Sure. 09:26:25

2 I think you testified that, 09:26:30

3 generally speaking, if you're doing competitive 09:26:33

4 intelligence-gathering activities, those 09:26:37

5 were -- you understood those to be at the 09:26:38

6 direction of counsel? 09:26:40

7 A. Yes. 09:26:40

8 Q. Okay. 09:26:40

9 So -- and do I understand 09:26:42

10 correctly that, as a result of that, you made 09:26:43

11 an effort when communicating in writing about 09:26:46

12 your competitive intelligence-gathering 09:26:50

13 activities that those should be labeled 09:26:53

14 attorney-client privilege. 09:26:55

15 MR. UMHOFFER: Objection, vague and 09:26:58

16 ambiguous. 09:26:59

17 MS. CHANG: Objection, misstates 09:26:59

18 prior testimony. 09:27:02

19 A. Okay. Then -- would you mind one 09:27:06

20 more time? 09:27:09

21 Q. Sure. 09:27:10

22 Do I understand correctly that as 09:27:10

23 a result of you understanding that your 09:27:12

24 competitive intelligence-gathering activities 09:27:17

25 were at the direction of counsel -- 09:27:19

1	A.	Right.	09:27:21
2	Q.	-- that you made an effort to	09:27:21
3		label communications about those activities as	09:27:22
4		attorney-client privilege?	09:27:24
5		MR. UMHOFFER: Same objection.	09:27:25
6		MS. CHANG: Objection, misstates	09:27:26
7		prior testimony.	09:27:28
8	A.	Yeah. I mean, my answer is what	09:27:32
9		it was, which is, based on the training I had,	09:27:34
10		I understood there to be two -- two categories	09:27:39
11		for labeling something attorney-client	09:27:42
12		privilege. Right? When soliciting advice or	09:27:44
13		guidance or if you're preparing a product that	09:27:48
14		had been at the direction of legal, those were	09:27:53
15		the times that I would use attorney-client	09:27:57
16		privilege.	09:27:59
17	Q.	And that included the times when	09:28:00
18		you did competitive intelligence-gathering	09:28:01
19		activities; right?	09:28:04
20	A.	If the report was at the direction	09:28:05
21		of legal, then I would label it appropriately,	09:28:09
22		as I understood it to be -- as I understood the	09:28:12
23		process.	09:28:16
24	Q.	All right.	09:28:16
25		And I think we established that	09:28:18

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1 A. I believe, yeah. I believe it was 09:51:24
2 September of this year. 09:51:26

3 Q. And is it your understanding that 09:51:27
4 communications done through the Wickr platform, 09:51:30
5 there's no record of them kept; is that right? 09:51:33

6 A. For the most part, right. As I 09:51:38
7 understand it, there's a new version now that 09:51:40
8 does keep a record, but yes. 09:51:42

9 Q. But when you were using it, you 09:51:43
10 understood that essentially those 09:51:46
11 communications would self-destruct within a 09:51:47
12 period of time? 09:51:49

13 A. Yes. 09:51:50

14 Q. And do you have an understanding 09:51:51
15 of what that period of time was? 09:51:52

16 A. Wickr allows you -- or as I 09:51:54
17 remember it, it allowed you to change those 09:51:55
18 settings. But I think for the most part 09:51:59
19 everybody was like five or six days, something 09:52:01
20 to that effect. 09:52:05

21 Q. And when would you use Wickr as 09:52:07
22 opposed to, let's say, email? 09:52:10

23 A. I think Wickr was kind of our 09:52:13
24 preferred method of communicating. So -- 09:52:21

25 Q. And do you have any understanding 09:52:24

1 of why Wickr was the preferred method? 09:52:27

2 A. Essentially -- you mentioned the 09:52:32
3 ephemerality, but Wickr is also encrypted 09:52:34
4 end-to-end communications. So there's no 09:52:37
5 chance of whatever you're discussing being 09:52:40
6 intercepted by someone else. 09:52:43

7 Q. So is it your understanding that 09:52:48
8 the main reasons for using Wickr were the 09:52:49
9 security and the ephemerality of the 09:52:52
10 communication? 09:52:56

11 A. Right, to protect our discussions. 09:52:57

12 Q. So it was routine during the 09:53:02
13 course of your work to use Wickr to communicate 09:53:04
14 with others at the company; is that fair? 09:53:07

15 A. Yes. Well, within Threat Ops, 09:53:10
16 yes. 09:53:12

17 Q. And -- and do you have an 09:53:12
18 understanding that others within Threat Ops 09:53:14
19 also preferred and routinely used Wickr to 09:53:16
20 communicate with each other? 09:53:19

21 A. Yes, that was my understanding. 09:53:20

22 Q. What about outside of Threat Ops? 09:53:22
23 Did -- do you have an understanding of whether 09:53:24
24 others used Wickr? 09:53:26

25 A. My use of Wickr was pretty much my 09:53:28

1	A.	I did not.	09:54:39
2	Q.	Are you aware of others who did?	09:54:40
3	A.	I believe Mr. Gicinto did, but I'm	09:54:43
4		not certain.	09:54:45
5	Q.	Was Wickr discussed during any of	09:54:52
6		the meetings that you had with the ATG group in	09:54:54
7		Pittsburgh?	09:54:59
8	A.	No. No, it was not.	09:55:00
9	Q.	Were there meetings happening as	09:55:02
10		far as you know with ATG group while you were	09:55:03
11		there that you were not involved in?	09:55:06
12	A.	While I was where? In Pittsburgh?	09:55:09
13	Q.	In Pittsburgh.	09:55:10
14	A.	Not that I'm aware of.	09:55:12
15	Q.	Other than using Wickr, have you	09:55:16
16		used other forms of ephemeral communications	09:55:23
17		while you've been at Uber to conduct Uber	09:55:25
18		business?	09:55:28
19	A.	Yes. The ephemeral HipChat and	09:55:29
20		UChat are Uber-wide ephemeral platforms.	09:55:32
21	Q.	Did UChat replace HipChat?	09:55:40
22	A.	Yes, it did.	09:55:42
23	Q.	Is UChat used at the company now?	09:55:44
24	A.	I believe it is. Yes, it is.	09:55:47
25		Yeah, it is.	09:55:49

1 Q. Did he explain that it was 09:57:12
2 preferable to use telephone calls or 09:57:14
3 in-conference meetings because there wouldn't 09:57:20
4 be a record of what was discussed during such 09:57:22
5 meetings or phone calls? 09:57:24

6 A. That was not my understanding of 09:57:25
7 his explanation, no. 09:57:27

8 Q. Did he explain that it was 09:57:31
9 preferable to use Wickr because there would not 09:57:32
10 be a record of communications that were had on 09:57:34
11 that platform? 09:57:37

12 A. No, that was not my understanding. 09:57:40

13 Q. Okay. 09:57:40

14 But you understood that was the 09:57:42
15 effect of using Wickr? 09:57:43

16 A. Yes. Yeah. Yeah. And that was 09:57:45
17 desirable from the perspective of protecting 09:57:47
18 information. 09:57:50

19 Q. Could documents be exchanged using 09:57:50
20 Wickr? 09:58:05

21 A. As I recall, they could not be 09:58:06
22 exchanged, but you could attach a document. 09:58:10
23 For example, I could attach a document send it 09:58:13
24 to you, you could read the document, but that 09:58:16
25 would be it. 09:58:19

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1 were not preserved; correct? 10:02:48

2 A. Correct. 10:02:50

3 MS. CHANG: Objection, vague and 10:02:50

4 ambiguous as to time period. 10:02:51

5 MR. UMHOFFER: And lack of 10:02:53

6 foundation. 10:02:54

7 BY MR. KAPGAN: 10:02:54

8 Q. And am I correct in assuming that 10:03:04

9 after you were put on a legal hold, you 10:03:06

10 continued to have communications on Wickr? 10:03:08

11 A. Yes. 10:03:14

12 Q. And as far as you're aware, other 10:03:14

13 people within Threat Ops continued to 10:03:18

14 communicate on Wickr as well? 10:03:20

15 A. Yes. 10:03:20

16 Q. And so if I wanted to try to find 10:03:32

17 out or you wanted to try to find out about 10:03:34

18 prior communications that you had on Wickr, you 10:03:39

19 wouldn't be able to access those at this point; 10:03:41

20 right? 10:03:44

21 A. No. 10:03:44

22 Q. Yes or no, were you given any 10:03:54

23 instruction about using or not using Wickr 10:03:57

24 after you were put on a legal hold? 10:04:03

25 A. I'm not sure that's a yes-or-no 10:04:11

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1 question. But the legal hold I received, as I 10:04:12
2 recall, stated we could not discuss Ric Jacobs 10:04:17
3 or those matters pending via Wickr. It did not 10:04:20
4 say we couldn't continue our other business via 10:04:24
5 Wickr. 10:04:27

6 MS. CHANG: I'm allowing the 10:04:27
7 witness to answer this line of 10:04:28
8 questioning pursuant to the 502 10:04:30
9 stipulation that the parties have in 10:04:33
10 place relating to this issue. 10:04:35

11 BY MR. KAPGAN: 10:04:35

12 Q. After you received that legal 10:04:48
13 hold, did you, in fact, discuss any of the 10:04:49
14 issues raised in the Ric Jacobs attorney letter 10:04:55
15 or any other matters about Ric Jacobs via 10:04:59
16 Wickr? 10:05:03

17 A. No. 10:05:03

18 Q. Are you aware of anyone else who 10:05:04
19 did? 10:05:05

20 A. No, I'm not aware. 10:05:06

21 Q. During the course of your time at 10:05:06
22 Uber, have you ever discussed Waymo or Google 10:05:15
23 with other folks at Uber via Wickr? 10:05:19

24 A. I'm sure I have, yes. 10:05:27

25 Q. Can you give me the context? 10:05:29

1 Q. In other words, you're not aware 10:08:41

2 of anyone at Uber using ephemeral 10:08:43

3 communications for the purpose of destroying 10:08:45

4 evidence of any sort? 10:08:49

5 A. Correct. For the purpose of 10:08:51

6 destroying evidence or the other thing you 10:08:53

7 said, evading discovery, no, I'm not aware of 10:08:55

8 anyone who has done that. 10:08:58

9 Q. You never had any conversations 10:09:12

10 with Mr. Gicinto or Mr. Clark on that subject? 10:09:14

11 A. On what subject? 10:09:17

12 Q. On the subject of using Wickr, as 10:09:18

13 an example, to prevent discovery of certain 10:09:23

14 information in litigation. 10:09:27

15 A. No. 10:09:27

16 Q. You said that you had some 10:09:45

17 projects that you worked on with Mr. Jacobs; is 10:09:46

18 that right? 10:09:46

19 A. No, I did not say that. 10:09:50

20 Q. Okay. 10:09:51

21 Can you remind me again, what was 10:10:00

22 your interaction with Mr. Jacobs? What did 10:10:02

23 that consist of? 10:10:04

24 A. I met him a handful of times when 10:10:07

25 I came out to San Francisco, a couple of times 10:10:08

1 in the office. There were a couple of team 10:10:11
2 dinners. 10:10:17

3 Q. During the course of his 10:10:19
4 employment at Uber, did you ever become aware 10:10:21
5 of any objections that Mr. Jacobs made to any 10:10:25
6 practices taking place at Uber? 10:10:29

7 A. No. No, I'm not aware of him 10:10:30
8 making any objections. 10:10:33

9 Q. Did you discuss with Mr. Gicinto 10:10:37
10 at any time the objections or allegations that 10:10:40
11 Mr. Jacobs made in his attorney letter to Uber? 10:10:46

12 A. No. I did not see the letter and 10:10:50
13 nobody discussed it with me. 10:10:54

14 Q. Okay. 10:10:56

15 So in terms of the allegations in 10:11:00
16 Mr. Jacobs' letter, other than with your 10:11:01
17 attorneys, you haven't actually discussed those 10:11:06
18 allegations with anyone at Uber; is that right? 10:11:07

19 A. At Uber? 10:11:10

20 Q. Yeah. 10:11:11

21 A. No. There was an internal 10:11:12
22 investigation conducted by Wilmer Hale. They 10:11:13
23 asked a series of questions. 10:11:16

24 MS. CHANG: I would like to 10:11:19

25 interject here. I would like to caution 10:11:20

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1	A.	Misattributable devices, yes.	10:13:33
2	Q.	Okay.	10:13:34
3		What are misattributable devices?	10:13:36
4	A.	Those are devices that don't tie	10:13:38
5		directly back to you as a user.	10:13:40
6	Q.	Have you sometimes heard those	10:13:46
7		referred to as nonattributable devices?	10:13:48
8	A.	Yes.	10:13:50
9	Q.	Same thing, as far as you know?	10:13:51
10	A.	As far as I know, there is nothing	10:13:54
11		as a nonattributable device. It's going to	10:13:58
12		attribute to something.	10:14:01
13	Q.	Did Uber purchase misattributable	10:14:03
14		devices?	10:14:06
15	A.	Yes.	10:14:07
16	Q.	For what purpose?	10:14:08
17	A.	Two purposes: We had -- whenever	10:14:12
18		research was being done into a hostile actor,	10:14:18
19		particularly overseas, you would use a	10:14:22
20		misattributable device for that.	10:14:26
21		We also had a -- a system set up	10:14:28
22		to protect our most sensitive information. So	10:14:31
23		we would use the misattributable device to log	10:14:34
24		into that.	10:14:37
25	Q.	What kind of sensitive information	10:14:43

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1 Q. These were laptops? 10:18:43

2 A. Yes. 10:18:43

3 Q. What was your understanding as to 10:18:50

4 why the SSG reports were being stored on the 10:18:51

5 Nextcloud system that was not Uber's primary 10:18:55

6 system? 10:18:59

7 A. Security. 10:19:00

8 Q. Was there a belief that Uber's own 10:19:02

9 systems were not secure enough? 10:19:05

10 MR. UMHOFFER: Objection, calls for 10:19:08

11 speculation. 10:19:08

12 BY MR. KAPGAN: 10:19:10

13 Q. Do you understand it? 10:19:10

14 A. It was -- the -- being hacked was 10:19:12

15 a concern, yes. 10:19:14

16 Q. What was your understanding, if 10:19:14

17 you had any, as to why these SSG reports were 10:19:36

18 deemed to be the kind of information that 10:19:40

19 should be on Nextcloud's system as opposed to 10:19:43

20 any other information that Uber had? 10:19:47

21 A. Say that again. 10:19:51

22 Q. Sure. 10:19:52

23 As I understand it, your 10:19:54

24 understanding is that the only type of 10:19:55

25 information that was stored on these -- on this 10:19:59

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1 Nextcloud system were these SSG reports; 10:20:03

2 correct? 10:20:06

3 A. Yes. 10:20:06

4 Q. Do you have any understanding of 10:20:07

5 why there was no other information of Uber that 10:20:08

6 was stored on Nextcloud systems, given the 10:20:13

7 concern for hacking? 10:20:17

8 A. I -- I don't know why. I know it 10:20:18

9 was set up to protect our information. 10:20:21

10 Q. Do you have an understanding of 10:20:23

11 who knew about the Nextcloud system? 10:20:25

12 A. Well, obviously all those of us 10:20:32

13 who used it. Mat Henley, Craig Clark, Joe 10:20:34

14 Sullivan. I imagine there's a few others. 10:20:40

15 Q. How many different people used the 10:20:45

16 system? 10:20:47

17 A. Let's see. Seven or eight or so. 10:20:50

18 Q. These were all folks who were in 10:21:01

19 the SSG group? 10:21:03

20 A. Or Threat Ops. 10:21:04

21 Q. Can you tell me who you believe 10:21:07

22 those folks were? 10:21:08

23 A. Myself, Nick Gicinto, Jake Nocon, 10:21:10

24 Anna Chung, Mat Henley, Susan Chiang. I'm not 10:21:15

25 sure if there were others, but I think 10:21:24

1 that's -- that might be it.

10:21:25

2 Q. Do you know when that system was
3 first created, the Nextcloud system?

10:21:29

4 A. I want to say January of this
5 year, 2017.

10:21:35

6 Q. Does it still exist?

10:21:38

7 A. No .

10:21:38

8 Q. Why not?

10:21:45

9 A. The decision was made to take it
10 down because it was very expensive, too clunky,
11 not -- it was secure, but it was not very user
12 friendly. So --

10:21:45

13 Q. So what happened to the reports
14 that -- that were stored on there?

10:21:58

15 A. Nick pulled all those down off the
16 cloud. He has those.

10:22:00

17 Q. Were they put on Uber's main
18 systems?

10:22:04

19 A. I do not know. I don't believe
20 so, but I do not know.

10:22:07

21 Q. Do you have any understanding of
22 why those reports were not put on Uber's main
23 system?

10:22:10

24 A. No, I don't know.

10:22:16

25 Q. Do you know when the decision was

10:22:22

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1 Q. Do you have an understanding that 10:23:38

2 Dropbox was deemed to be not sufficiently 10:23:40

3 secure and that was the reason for transferring 10:23:43

4 to Nextcloud? 10:23:46

5 A. The Nextcloud system was 10:23:49

6 contracted and put in place to have a more 10:23:52

7 secure system. So yes. 10:23:54

8 Q. Was that the primary reason of -- 10:23:57

9 of moving to Nextcloud? 10:23:59

10 A. Yes. Yeah. 10:24:01

11 Q. Do you have an understanding that 10:24:08

12 the SSG reports were removed from Dropbox 10:24:09

13 during that transition period? 10:24:11

14 A. Yes. 10:24:11

15 Q. Were there any other systems other 10:24:23

16 than Dropbox and Nextcloud that you're aware of 10:24:25

17 that were used to store sensitive Uber 10:24:27

18 information? 10:24:30

19 A. No. 10:24:30

20 Q. The SSG reports that were stored 10:24:44

21 on Dropbox and then Nextcloud, can you tell me 10:24:46

22 the kinds of reports that were stored there? 10:24:51

23 A. Sure. Some were research and 10:24:56

24 assessments on competitors. Some were reports 10:25:00

25 about situations in foreign countries that 10:25:03

1 beared on Uber's operations there.

10:25:07

2 Q. Any other types of reports? 10:25:11

3 A. Probably, but, I mean, 10:25:18

4 specifically I can't think of. Those are 10:25:19

```
5      the -- the two primary types we would write.      10:25:21
```

6 Q. Were any of these reports, to your 10:25:23

7 knowledge, ever sent to individuals outside of 10:25:31

8 Threat Ops team? 10:25:35

9 A. I don't know. 10:25:44

10 Q. Do you know if there was any 10:25:45

11 policy that -- in place that, written or 10:25:46

12 unwritten, that such reports, given the 10:25:50

13 sensitive nature and the fact that they existed 10:25:52

14 on this non-Uber system, should not be sent to 10:25:56

15 folks outside of the Threat Ops team? 10:25:59

16 A. I don't know of any policy. I 10:26:03

17 mean, if the report was prepared at the 10:26:05

18 direction of a customer or, you know, had value 10:26:12

19 to somebody, I'm certain it was showed to them. 10:26:14

20 Q. When you say "customer," you're 10:26:22

21 referring to internal Uber folks or someone 10:26:23

```
22      else?                                     10:26:25
```

23 A. Internal Uber, yes. 10:26:26

24 0. Do you have any understanding of 10:26:33

25 how many different reports were contained on 10:26:35

1 Uber procurement purchase, then it's an -- it's 10:31:40
2 obviously and clearly an Uber laptop. So by -- 10:31:44
3 by going outside to a contractor and purchasing 10:31:48
4 that way, it -- basically that's part of what 10:31:50
5 makes it misattributable. 10:31:53
6 Q. You're saying that if Uber itself 10:31:55
7 purchased a laptop, that others who are viewing 10:31:58
8 that laptop, accessing, for example, a computer 10:32:04
9 system on the Internet would be able to figure 10:32:07
10 out that that laptop came from Uber? Is that 10:32:09
11 the idea? 10:32:13
12 A. I think so. Again, now you're 10:32:14
13 getting into the technical stuff that I really 10:32:15
14 can't speak to. 10:32:18
15 Q. Aside from laptop computers, what 10:32:25
16 other kinds of misattributable devices are you 10:32:27
17 aware of that were purchased by Uber? 10:32:29
18 A. The MiFi is to connect to the 10:32:31
19 Internet. 10:32:35
20 Q. Any -- any other devices? 10:32:43
21 A. Not to my knowledge. 10:32:44
22 Q. Did I understand correctly that to 10:32:45
23 access the Nextcloud system, folks at Uber 10:32:54
24 exclusively used misattributable devices? 10:32:57
25 A. Yes. 10:33:03

1 I caution the witness not to 10:40:23
2 disclose the substance of any privileged 10:40:24
3 communication. 10:40:26

4 A. If you're asking me, did the 10:40:28
5 misattributable devices exist to avoid 10:40:31
6 discovery, then the answer is no. 10:40:34

7 Q. No. My question was just, did you 10:40:37
8 have any understanding that use of 10:40:40
9 misattributable or nonattributable devices, 10:40:45
10 that activities with respect to those -- that 10:40:48
11 use would not be subject to legal discovery? 10:40:52

12 MR. UMHOFFER: Objection, vague and 10:40:55
13 ambiguous, calls for speculation. 10:40:56

14 A. Yeah, I -- if I understand the 10:41:00
15 question, was this -- were these used to avoid 10:41:02
16 legal discovery, then the answer is no. 10:41:07

17 Q. Did you have any understanding 10:41:09
18 that one effect of using such devices would be 10:41:10
19 to avoid discovery? 10:41:13

20 A. No, I had no such understanding. 10:41:15

21 Q. Do you have any understanding of 10:41:28
22 whether any of the information that was 10:41:29
23 uploaded to Dropbox or Nextcloud as part of 10:41:31
24 this alternative system, that any of that 10:41:35
25 information was ever destroyed or deleted? 10:41:38

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1 or the other about those allegations? 10:44:13

2 A. I have no knowledge about those 10:44:15

3 allegations. 10:44:17

4 Q. There are also allegations by 10:44:21

5 Mr. Jacobs that the Marketplace Analytics team 10:44:23

6 used certain tactics to obtain trade secrets 10:44:26

7 from third parties. Do you have any knowledge 10:44:29

8 about that? 10:44:32

9 A. I do not. 10:44:35

10 Q. Did you ever witness anyone at 10:44:36

11 Uber obtain confidential information or trade 10:44:38

12 secrets from a third party? 10:44:40

13 A. No. 10:44:40

14 Q. There are some allegations about 10:45:00

15 you in the letter, which I'm sure you're 10:45:01

16 familiar -- familiar with. 10:45:03

17 A. Yes. 10:45:04

18 Q. It -- one of those allegations is 10:45:06

19 that you were actively engaged in human 10:45:09

20 intelligence and identifying market penetration 10:45:14

21 opportunities for Uber in the [REDACTED] 10:45:16

22 market specifically. 10:45:20

23 Is that a fair -- is that 10:45:21

24 allegation true? 10:45:22

25 A. The allegation is not true. 10:45:24

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1 A. You would have to ask Mr. Jacobs 10:46:03

2 because I do not. 10:46:05

3 Q. He also stated that part of your 10:46:08

4 role was to enable competitive intelligence and 10:46:10

5 the theft of trade secrets by developing 10:46:13

6 sources within competitor organizations. 10:46:16

7 That's what you just mentioned as human 10:46:17

8 intelligence. 10:46:20

9 A. Yes. 10:46:20

10 Q. I take it you deny that 10:46:20

11 allegation? 10:46:22

12 A. You take that correctly. I 10:46:22

13 absolutely deny that allegation. 10:46:24

14 Q. Did you ever have an opportunity 10:46:25

15 to vet insiders at competitor organizations? 10:46:27

16 A. No. 10:46:27

17 Q. Prior to you learning about the 10:46:45

18 Jacobs allegations, did you ever hear the 10:46:47

19 allegation that Uber stole trade secrets from 10:46:53

20 Waymo? 10:46:56

21 A. Say that again. Prior to the 10:46:58

22 Jacobs letter? 10:46:59

23 Q. Yes. 10:46:59

24 A. Just what was in the news when the 10:47:01

25 lawsuit, you know, became public or was filed 10:47:03

1 as you know, that was responsible for doing the 10:50:17
2 things that SSG was doing prior to the time 10:50:18
3 that SSG was formed? 10:50:20
4 A. Not to my knowledge. 10:50:21
5 Q. Now, there's an allegation by 10:50:34
6 Mr. Jacobs that Russo, Gicinto and Nocon 10:50:36
7 traveled to Pittsburgh and educated the team on 10:50:40
8 using ephemeral communications, nonattributable 10:50:42
9 devices and false attorney-client privilege 10:50:45
10 designations. 10:50:49
11 Do you generally recall that? 10:50:50
12 A. I recall his allegation, yes. 10:50:53
13 Q. True or not true? 10:50:56
14 A. Not true. 10:50:57
15 Q. None of that happened; is that 10:51:04
16 right? 10:51:04
17 A. Mr. Gicinto and I traveled to 10:51:04
18 Pittsburgh, Mr. Nocon and I traveled to 10:51:04
19 Pittsburgh, Mr. Gicinto and I traveled to 10:51:06
20 Pittsburgh again. Yes, that's true. We never 10:51:08
21 discussed using ephemeral communications or 10:51:11
22 misattribute devices with anybody there. That 10:51:16
23 was not the purpose of the trip. Never 10:51:18
24 happened. 10:51:20
25 Q. And you didn't discuss 10:51:20

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1	attorney-client privileged designations; right?	10:51:23
2	A. Did not discuss attorney-client --	10:51:23
3	[Reporter clarification.]	10:51:23
4	Q. You didn't discuss attorney-client	10:51:23
5	privileged designations; right?	10:51:23
6	A. Correct, I did not discuss	10:51:26
7	attorney-client privileged designations.	10:51:28
8	MS. CHANG: Counsel, when you're	10:51:30
9	at a good stopping point. We've been	10:51:39
10	going over an hour.	10:51:41
11	MR. KAPGAN: Let's do it.	10:51:42
12	THE VIDEOGRAPHER: We're going off	10:51:43
13	the record. The time is 10:52 a.m.	10:51:44
14	[Recess at 10:52 a.m.]	10:52:24
15	[Resuming at 11:05 a.m.]	10:52:28
16	THE VIDEOGRAPHER: We are back on	11:04:56
17	the record. The time is 11:05 a.m.	11:04:58
18	EXAMINATION CONTINUING	11:04:58
19	BY MR. KAPGAN:	11:04:58
20	Q. We talked a little earlier,	11:05:01
21	Mr. Russo, about human intelligence activities,	11:05:02
22	which I understood to mean trying to gather	11:05:06
23	trade secrets and confidential information from	11:05:09
24	folks employed by third-party competitors as an	11:05:14
25	example; correct?	11:05:16

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1 A. Yes, that was discussed. 11:05:21

2 Q. Are you aware of anyone at Uber 11:05:22

3 ever doing that? 11:05:24

4 A. Doing what? 11:05:26

5 Q. Those kinds of human 11:05:27

6 intelligence-gathering activities. 11:05:29

7 A. No. 11:05:39

8 Q. Mr. Jacobs in his attorney's 11:05:43

9 letter refers to some surveillance activities 11:05:46

10 with respect to [REDACTED]. 11:05:50

11 Do you remember that? 11:05:51

12 A. I remember him referring to that 11:05:53

13 in his letter, yes. 11:05:55

14 Q. And you had mentioned earlier in 11:05:56

15 the deposition today that you understood that 11:05:58

16 there was some surveillance happening with 11:06:01

17 respect to [REDACTED]; is that right? 11:06:03

18 A. Yes. Prior to my being hired, 11:06:05

19 yes. 11:06:06

20 Q. Okay. 11:06:07

21 And what is it that -- what do you 11:06:11

22 know, based on talking to others at Uber, 11:06:14

23 happened with respect to the surveillance 11:06:17

24 activities that Uber conducted with respect to 11:06:19

25 [REDACTED]? 11:06:22

1 Q. Have you been involved -- I think 11:10:57
2 you mentioned that you were involved in doing 11:10:57
3 research about [REDACTED]? 11:10:59

4 A. Yes. 11:10:59

5 Q. It's a competitor in [REDACTED]; right? 11:11:02

6 A. Correct. A ridesharing company 11:11:05
7 there. 11:11:07

8 Q. Are you aware of any confidential 11:11:19
9 information or trade secrets of [REDACTED] that 11:11:26
10 anyone at Uber has obtained? 11:11:29

11 A. Confidential information or trade 11:11:39
12 secrets? No. 11:11:39

13 Q. I take it there's other kinds of 11:11:43
14 information that individuals at Uber have 11:11:45
15 obtained from [REDACTED] 11:11:46

16 A. Yes, there is. 11:11:50

17 Q. Can you give me some examples? 11:11:50

18 A. It's a very competitive market 11:11:53
19 there. It's a very competitive market. Part 11:11:55
20 of the competition is for drivers, to have 11:11:58
21 drivers on your platform. 11:12:01

22 So [REDACTED] made it a requirement that 11:12:02
23 if you're going to drive for them, you have to 11:12:10
24 provide [REDACTED]-- and you're also an Uber driver, 11:12:12
25 you have to provide [REDACTED] your Uber credentials 11:12:16

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1 forth but that our engineering teams didn't 11:52:08

2 have the resources to be able to build that. 11:52:11

3 Q. Did -- as far as you know, did 11:52:14

4 Mr. Gicinto think it was a good idea to create 11:52:17

5 such a database? 11:52:20

6 A. Yeah, I don't believe he objected 11:52:21

7 to it. 11:52:23

8 Q. So the reason as far as you're 11:52:28

9 aware that Mr. Jacobs' proposal to create this 11:52:30

10 kind of intelligence database did not proceed 11:52:34

11 was simply because there weren't sufficient 11:52:37

12 internal resources at Uber to make it happen? 11:52:42

13 A. That was my understanding, yes. 11:52:46

14 Q. Did you have an understanding that 11:52:48

15 the proposal would include taking the 11:52:51

16 information that resided on the Nextcloud 11:52:57

17 system and putting that onto some kind of 11:53:02

18 centralized repository maintained by Uber? 11:53:04

19 A. I -- I don't know whether that was 11:53:07

20 going to be the result of that as well. 11:53:08

21 Q. Do you know whether Mr. Jacobs 11:53:11

22 knew about the Nextcloud system? 11:53:12

23 A. I don't know whether he knew or 11:53:14

24 not. 11:53:16

25 Q. With respect to this intelligence 11:53:34

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1 was an update that was scheduled and that it 14:02:28

2 had been cancelled or postponed or some such, 14:02:30

3 so I don't remember exactly how the whole thing 14:02:33

4 transpired. 14:02:35

5 Q. How many reports of this type do 14:02:38

6 you recall being generated? 14:02:40

7 A. After this one, probably one, 14:02:48

8 maybe two more, but I think one more. 14:02:50

9 Q. Were there any before this? 14:02:53

10 A. I believe this would be the first, 14:02:56

11 December 2016. 14:02:58

12 Q. And was there a particular person 14:03:03

13 who commissioned or authorized this report? 14:03:04

14 A. It's my understanding that 14:03:07

15 Mr. Sullivan wanted this information, yes. 14:03:09

16 Q. And, generally, can you tell me, 14:03:15

17 what's the purpose of this document? 14:03:17

18 A. Basically to provide a sense of 14:03:22

19 the lay of the land, as it were, regarding the 14:03:26

20 various leaders in the autonomous vehicle 14:03:30

21 field. 14:03:34

22 Q. And do you know why that was 14:03:36

23 important for Mr. Sullivan or Uber to have? 14:03:39

24 A. I do not know why. I mean, my 14:03:43

25 assumption, of course, was that -- I mean, 14:03:45

1 you're in the race for groundbreaking 14:03:48

2 technology. You want to kind of have an 14:03:50

3 understanding of where you are in that race as 14:03:53

4 best you can. 14:03:55

5 Q. Did you lead the drafting of this 14:04:02

6 document? 14:04:04

7 A. I think, yeah, that's a fair 14:04:04

8 characterization. 14:04:07

9 Q. You had ownership over it? 14:04:07

10 A. Uh-huh. 14:04:09

11 Q. Yes? I just want to make sure 14:04:09

12 it's audible for the record. Yes? 14:04:11

13 A. Yes. I'm sorry. 14:04:14

14 Q. All right. 14:04:14

15 If you turn to the second page. 14:04:19

16 It says "TLDR" at the top. 14:04:28

17 A. Yes. 14:04:30

18 Q. What does that stand for? 14:04:31

19 A. Apparently, that's either an Uber 14:04:31

20 or Silicon Valley thing. It means too long. I 14:04:34

21 didn't read it. 14:04:36

22 Q. And so is this basically an 14:04:37

23 executive summary of the document? 14:04:39

24 A. Yeah, that's exactly what it is. 14:04:40

25 Q. And then if you look at the first 14:04:42

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1 Q. And that was based on what? 14:05:25

2 A. Based on interviews with our own 14:05:27

3 ATG employees as well as open-source reporting, 14:05:29

4 newspaper articles and such. 14:05:33

5 Q. All right. 14:05:38

6 Third bullet says: 14:05:39

7 "There are indicators Turtle may 14:05:39

8 now be a significant threat in the AV race." 14:05:39

9 Right? 14:05:39

10 A. Yes. 14:05:45

11 Q. That's a reference to [REDACTED]? 14:05:45

12 A. It's a reference to [REDACTED] yes. 14:05:46

13 Q. And where did you learn that? 14:05:48

14 A. A combination, again, of 14:05:49

15 open-source, newspaper articles and what have 14:05:51

16 you, and our own engineers assessed that 14:05:53

17 [REDACTED] own public pronouncements about 14:05:56

18 [REDACTED] positioning in the race, if you will, 14:06:00

19 or [REDACTED] capabilities were overblown. 14:06:03

20 Q. Next bullet: 14:06:08

21 "Zebra's goal is to reinvent 14:06:10

22 completely the automobile"? 14:06:12

23 A. Yes. 14:06:12

24 Q. That's referring to [REDACTED]? 14:06:13

25 A. It is. 14:06:14

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1 Q. And what did you rely on to make 14:06:15
2 that statement? 14:06:18

3 A. Either a newspaper article or a 14:06:19
4 tech blog or some such. 14:06:22

5 Q. Last bullet says: 14:06:26

6 "SSG's 2017 research will focus on 14:06:28
7 Giraffe, Turtle, Zebra and Turtle/Chimp as well 14:06:30
8 as competitors from Asia." 14:06:35

9 Right? 14:06:36

10 A. Yes. 14:06:36

11 Q. Okay. 14:06:36

12 And -- and so I take it that what 14:06:39
13 was being conveyed here was that, in the 14:06:44
14 following year in 2017, this Strategic Services 14:06:47
15 Group was going to focus its research on 14:06:51
16 Google, among others -- 14:06:54

17 A. Yes. 14:06:54

18 Q. -- correct? 14:06:58

19 A. Uh-huh. 14:06:58

20 Q. And who -- was there someone 14:07:02
21 responsible for directing that that be a 14:07:05
22 priority for Uber? 14:07:09

23 A. I'm sorry? 14:07:13

24 Q. That research on Google and these 14:07:14
25 other companies, that that was a priority for 14:07:16

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1 Uber? 14:07:19

2 A. That bullet statement was 14:07:19
3 essentially a recommendation in the executive 14:07:22
4 summary. The requirement was to get as good a 14:07:25
5 handle as we could on where the various 14:07:28
6 competitors were. 14:07:30

7 As you can see, there's probably 14:07:31
8 -- at the time, anyway, there's probably coming 14:07:34
9 up on two dozen manufacturers or tech companies 14:07:37
10 that were involved in the autonomous vehicle 14:07:40
11 race. Obviously, limited resources. Who do we 14:07:42
12 focus on? Focus on the leaders in the 14:07:45
13 industry. 14:07:48

14 And so that last bullet statement 14:07:49
15 was more, again, a recommendation. If 14:07:51
16 management or leadership wanted us to focus on 14:07:54
17 somebody else, we would. 14:07:57

18 Q. Did you come up with this 14:08:01
19 recommendation yourself, or did someone else 14:08:03
20 provide -- 14:08:05

21 A. I remember writing it. I remember 14:08:06
22 Mr. Gicinto agreeing with it. 14:08:08

23 Q. All right. 14:08:08

24 If you look at the next slide, 14:08:13
25 which is titled, "Baseline Research." First 14:08:14

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1	bullet says:	14:08:17
2	"Source code, not hardware	14:08:18
3	automotive design, is the key to success."	14:08:19
4	A. Right.	14:08:23
5	Q. And you wrote that bullet?	14:08:23
6	A. I did.	14:08:25
7	Q. And what was your statement based	14:08:26
8	on?	14:08:29
9	A. Interviews with our personnel in	14:08:29
10	ATG.	14:08:32
11	Q. Then the second bullet:	14:08:33
12	"All the source code necessary for	14:08:35
13	success can be compressed to 75 megabytes plus	14:08:36
14	or minus."	14:08:39
15	Do you see that?	14:08:41
16	A. I do.	14:08:41
17	Q. Was that also based on your	14:08:42
18	discussions with ATG personnel?	14:08:43
19	A. Yes.	14:08:43
20	Q. And just, in general, you don't	14:08:56
21	believe any of the statements in this	14:08:57
22	presentation are inaccurate. Do you believe	14:08:59
23	them to be all accurate as far as you knew at	14:09:02
24	the time?	14:09:04
25	A. As far as I knew at the time, yes.	14:09:04

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1 A. I have no understanding what 14:12:20

2 Mr. Sullivan was thinking. 14:12:22

3 Q. As far as you're aware sitting 14:12:23

4 here today and looking at these slides, there's 14:12:25

5 not any legal advice in these slides, is there? 14:12:27

6 A. No, there is not. 14:12:30

7 Q. If you look at the slide marked 14:12:31

8 939, which is the next to last slide. 14:12:35

9 A. Right. 14:12:37

10 Q. It's entitled, "Plans"? 14:12:39

11 A. Yes. 14:12:42

12 Q. And it's -- the first bullet says: 14:12:42

13 "For 2017, SSG's priority effort 14:12:44

14 will be Giraffe." 14:12:48

15 A. Yes. 14:12:51

16 Q. Explain to me what that means. 14:12:51

17 A. That the bulk of our research 14:12:53

18 efforts would be tracking Giraffe's success or 14:12:55

19 efforts to improve its autonomous vehicle 14:12:58

20 program. 14:13:02

21 Q. And why was it important for Uber 14:13:02

22 to track the success of Google's autonomous 14:13:04

23 vehicle program? 14:13:10

24 A. Based on my understanding, because 14:13:10

25 Google was the leader in the field, and if Uber 14:13:12

1 was going to succeed or be the one to win the 14:13:14
2 race, it wanted to have an understanding of how 14:13:18
3 Giraffe was proceeding or progressing. 14:13:23

4 Q. Was this your recommendation, to 14:13:26
5 prioritize effort on Google's autonomous 14:13:27
6 vehicle program for 2017? 14:13:30

7 A. I honestly don't recall. It 14:13:36
8 wouldn't surprise me because it makes sense, 14:13:38
9 but I also know how it was my understanding 14:13:40
10 that it was -- that Google was of high interest 14:13:45
11 and high priority to Mr. Sullivan and ATG 14:13:47
12 folks. 14:13:51

13 Q. Did Mr. Gicinto agree with your 14:13:54
14 recommendation here? 14:13:56

15 A. I believe he did. It's -- it's -- 14:13:57
16 that's how we presented it. 14:14:00

17 Q. Were you part of the -- well, 14:14:09
18 first of all, are you aware of whether there 14:14:09
19 was a presentation by Mr. Gicinto to 14:14:09
20 Mr. Sullivan about this slide deck? 14:14:10

21 A. I believe there was, yes. 14:14:13

22 Q. Were you part of that? 14:14:14

23 A. I don't believe I was, no. 14:14:15

24 Q. Do you know who was part of that 14:14:17
25 other than the two of them? 14:14:18

1 A. I do not. I assume Mat Henley 14:14:20

2 would have been part of it. 14:14:22

3 Q. Did you talk to Mr. Gicinto about 14:14:23

4 his presentation after he made it? 14:14:26

5 A. I assume we did. I mean, I don't 14:14:32

6 remember specifics, but I'm sure we did. 14:14:34

7 Q. As a result of the meeting that 14:14:37

8 Mr. Gicinto had with Mr. Sullivan about this 14:14:39

9 Exhibit 9007, were there any changes to the 14:14:51

10 priorities or recommendations that are 14:14:51

11 contained in this exhibit? 14:14:53

12 A. Not as I recall. 14:14:55

13 Q. So it was full steam ahead with 14:14:56

14 respect to the recommendations in this exhibit; 14:14:59

15 is that fair? 14:15:01

16 A. Yes. 14:15:01

17 Q. Did Mr. Gicinto convey to you 14:15:16

18 anything else, any details about his 14:15:16

19 conversation with Mr. Sullivan about this slide 14:15:16

20 deck? 14:15:19

21 A. Not that I recall. I mean, I 14:15:21

22 think your previous characterization's probably 14:15:23

23 pretty accurate. At that point in time, just 14:15:26

24 continue to do the kind of research we'd been 14:15:28

25 doing. 14:15:30

1 Q. -- the number one priority is 14:43:29

2 listed as source code? 14:43:31

3 A. Correct. 14:43:32

4 Q. What does that mean? 14:43:32

5 A. Just that, to get a sense from any 14:43:36

6 of the vendors that were there, anybody that 14:43:38

7 was presenting, anything we could learn about 14:43:41

8 people's opinions or thoughts on the importance 14:43:48

9 of source code, et cetera. 14:43:50

10 Q. Well, you already knew that source 14:43:54

11 code at this time was important to autonomous 14:43:55

12 vehicles; correct? 14:43:58

13 A. Correct. 14:43:59

14 Q. So what specifically -- or why was 14:43:59

15 source code a priority in terms of collection? 14:44:02

16 What did that mean in terms of this document? 14:44:04

17 A. One of the things we were 14:44:07

18 interested in is whether or not people 14:44:09

19 were -- you know, other competitors were 14:44:10

20 struggling with their source code, were they 14:44:12

21 confident in it, that kind of thing. 14:44:14

22 Q. How would that -- why is 14:44:17

23 that -- why was that important to Uber? 14:44:19

24 A. Once again, give kind of a sense 14:44:21

25 of where Uber stood in the race, where other 14:44:24

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1 competitors may stand in the race, whether 14:44:28
2 they're confident, whether they're -- they're 14:44:29
3 succeeding or not succeeding. 14:44:32

4 Q. So other than collecting 14:44:35
5 information at CES about whether competitors 14:44:40
6 were struggling with their source code, what 14:44:46
7 else with respect to source code was Uber 14:44:48
8 trying to assess or obtain at CES 2017 with 14:44:52
9 respect to source code? 14:44:57

10 MR. UMHOFFER: Objection, calls for 14:45:00
11 speculation. 14:45:01

12 A. Just what I said. I mean, a sense 14:45:03
13 for where other -- other competitors are in 14:45:05
14 terms of their confidence in their -- their 14:45:07
15 source code and whether it's going to lead to 14:45:10
16 success. 14:45:12

17 Q. How would you obtain information 14:45:13
18 about source code that was written by 14:45:14
19 competitors at CES 2017? 14:45:19

20 A. To make sure I understand your 14:45:23
21 question correctly, we weren't looking to get 14:45:24
22 competitors' source code. We were just looking 14:45:27
23 to get a sense for how confident they were in 14:45:29
24 it. At a conference like that or a -- I mean, 14:45:31
25 it's a large-scale event. You know, if any 14:45:35

1 vendors or any of the companies or competitors 14:45:40
2 were sharing that information, we would be 14:45:43
3 interested in it. 14:45:45

4 I mean, it's one of those -- an 14:45:47
5 event like that is a place where, obviously, 14:45:49
6 people come together. They talk about their 14:45:51
7 successes. They try to showcase that -- their 14:45:53
8 success, et cetera. 14:45:57

9 Q. So one way that you would try to 14:46:00
10 obtain information about competitors source 14:46:02
11 code was to talk to vendors or suppliers to 14:46:05
12 those competitors at CES 2017? 14:46:08

13 A. I don't know that vendors work on 14:46:12
14 source code. Source code is -- you know, 14:46:14
15 that's, what do you call it, the -- internal to 14:46:17
16 a company, so -- 14:46:20

17 Q. So how would you get information 14:46:22
18 about source code? 14:46:24

19 A. Well, let's back up. We never 14:46:27
20 did. The idea was that, should anybody be 14:46:29
21 discussing it, we would be listening. But in 14:46:31
22 terms of like an active effort to do it, I 14:46:36
23 mean, that didn't take place. 14:46:40

24 Q. Let me make sure I understand 14:46:41
25 that. This says: 14:46:42

1 "Number one priority for 14:46:43
2 collection is source code at CES 2017." 14:46:45

3 So what was the method that Uber 14:46:49
4 or your group would use to try to collect 14:46:56
5 information about competitors' source code? 14:47:01

6 A. Again, when competitors, if they 14:47:05
7 were giving a presentation, if they were 14:47:07
8 discussing what their -- their plans or what 14:47:09
9 they believed their successes were going to be, 14:47:13
10 to listen to that. 14:47:15

11 I understand your question. It 14:47:16
12 says, you know, number one is source code. 14:47:18
13 That's -- that goes back to the previous 14:47:20
14 analysis, correct, that everything hinges on 14:47:22
15 the source code. So, again, are companies 14:47:25
16 comfortable with where they stand vis-à-vis 14:47:29
17 their source code? 14:47:31

18 Q. So your intention in collecting 14:47:33
19 intelligence at CES 2017 with respect to source 14:47:36
20 code was to listen to what your competitors 14:47:39
21 were saying about their own source code? 14:47:43

22 A. Yeah. Back up. 14:47:48
23 If you -- again, intelligence, if 14:47:50
24 you're using that to mean protected 14:47:52
25 information, yeah, that's not what we were 14:47:54

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1 there for. But we were there to listen to 14:47:56
2 information, absolutely. 14:47:58

3 Q. Well, whether it was confidential 14:47:59
4 or not, I didn't limit it that way. So let me 14:48:02
5 just ask it again. 14:48:04

6 Was it -- was it your intention in 14:48:06
7 collecting information at CES 2017, with 14:48:08
8 respect to competitors' source code, simply to 14:48:12
9 attend presentations that your competitors were 14:48:17
10 giving to see if they mentioned anything about 14:48:20
11 source code? 14:48:22

12 A. Just that simple. 14:48:23

13 Q. Okay. 14:48:24

14 And is it -- did -- were you 14:48:26
15 successful? Did you hear any competitor talk 14:48:28
16 about source code at CES 2017? 14:48:31

17 A. No. 14:48:31

18 Q. Was that a reasonable expectation 14:48:36
19 on your company's part or your group's part, 14:48:37
20 to -- to -- 14:48:40

21 A. Uh-huh. 14:48:41

22 Q. -- expect that you would hear 14:48:42
23 about a competitor's source code directly from 14:48:44
24 the competitor? 14:48:46

25 A. I would say, no, it wasn't a 14:48:47

1 things like that from other companies, but -- 14:51:08

2 Q. The number one priority in terms 14:51:12

3 of organizations was Google on the list; 14:51:14

4 correct? 14:51:17

5 A. Yes. 14:51:17

6 Q. What information did Uber 14:51:20

7 personnel obtain about Google at CES 2017, to 14:51:23

8 your knowledge? 14:51:27

9 A. I don't recall us collecting 14:51:27

10 anything. 14:51:30

11 Q. So in terms of the number one 14:51:31

12 priorities for collection and organizations, 14:51:33

13 it's your testimony that Uber obtained no 14:51:37

14 information at CES 2017 on those topics or 14:51:41

15 subjects; is that right? 14:51:45

16 A. Uh-huh, yes. 14:51:46

17 Q. Okay. 14:51:47

18 So that was a failure? 14:51:48

19 A. You could characterize it that 14:51:49

20 way. 14:51:51

21 Q. What information with respect to 14:51:55

22 any of the other priorities for collection that 14:51:57

23 are listed here on Exhibit 9004 were obtained? 14:52:00

24 A. I'm trying to remember the name of 14:52:10

25 the company. There was a Korean company that 14:52:11

1	Vehicle Program?	14:58:58
2	A. I don't believe it did, no.	14:58:58
3	Q. Did you speak to Ms. Chung about	14:59:00
4	this report?	14:59:01
5	A. Yes, we discussed it.	14:59:02
6	Q. What did you discuss?	14:59:04
7	A. Basically the -- the claims of the	14:59:14
8	Jungsang CEO regarding his -- his product.	14:59:16
9	If I remember correctly, Anna	14:59:23
10	speculated that he was actually bragging and	14:59:25
11	that he didn't have -- or that Google had not	14:59:30
12	shown interest in his -- his LiDAR or	14:59:33
13	Jungsang's LiDAR.	14:59:38
14	If I remember correctly, her	14:59:43
15	assessment was that he was making that claim in	14:59:44
16	an effort to draw interest from investors and	14:59:48
17	other -- other folks.	14:59:51
18	Q. Did you do any followup research	14:59:54
19	about this Korean company in order to verify	14:59:59
20	the claims that the CEO made or otherwise?	15:00:03
21	A. No.	15:00:03
22	Q. And this one has -- this report	15:00:17
23	has a -- again, a label created at the	15:00:19
24	direction of legal?	15:00:22
25	A. Right.	15:00:23

1 competitors' plans, intentions and 15:15:51
2 capabilities." 15:15:53

3 Do you see that? 15:15:54

4 A. I do. 15:15:55

5 Q. And what did Mr. Ron instruct you 15:15:55
6 with respect to the supply chain members? 15:15:58

7 A. The -- the only thing I recall 15:16:07
8 from that is that -- and that's worded really 15:16:12
9 weird. 15:16:21

10 The only thing I recall from that 15:16:22
11 is just if we were able to identify who the 15:16:23
12 various suppliers or vendors were of certain 15:16:25
13 technology. Again, that would, as I understood 15:16:30
14 it, help Mr. Ron, Mr. Levandowski assess what 15:16:31
15 kind of direction whichever competitor, you 15:16:36
16 know, was taking in terms of their research. 15:16:38

17 Q. And was one of the things that you 15:16:40
18 were planning to do to speak with any supply 15:16:42
19 chain vendors of your competitors that you 15:16:47
20 could identify to see if you could get any 15:16:49
21 information about your competitors? 15:16:51

22 A. No, I don't recall ever having 15:16:54
23 such a plan, and we never did that. 15:16:55

24 Q. Well, this says supply chain 15:16:58
25 members are chatty and are good sources of 15:16:59

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1 A. Say that question again. 15:18:01

2 Q. Sure. 15:18:03

3 Do you have any information about 15:18:07

4 whether anyone in your group or outside of your 15:18:11

5 group at Uber talked to supply chain members or 15:18:14

6 vendors of Uber's -- strike that. Let me 15:18:21

7 rephrase that. 15:18:24

8 Do you have any understanding or 15:18:25

9 information about whether anyone in your group 15:18:27

10 or outside of your group at Uber spoke to 15:18:31

11 vendors or suppliers to Uber's competitors in 15:18:35

12 the autonomous vehicle space in order to gain 15:18:44

13 information about those competitors? 15:18:46

14 A. Yeah, I have no knowledge of 15:18:50

15 anyone speaking to supply chain members or -- 15:18:51

16 Q. Okay. 15:18:51

17 Did you speak to anyone on your 15:18:55

18 team about talking to supply chain members who 15:18:59

19 might be chatty or good sources of insight into 15:19:06

20 a competitor's plans? 15:19:07

21 A. No, I don't recall having that 15:19:09

22 conversation. 15:19:10

23 Q. Okay. 15:19:11

24 And as far as you know, this was a 15:19:13

25 requirement that was never actually executed or 15:19:15

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1	information in that deck about Uber's	15:36:19
2	competitors being reviewed with some of the	15:36:22
3	members of ATG?	15:36:24
4	A. That's my recollection.	15:36:25
5	Q. Let me show you previously marked	15:36:45
6	Exhibit 9206.	15:36:45
7	[Document passed to the witness.]	15:36:46
8	Q. Have you seen this document	15:37:13
9	before?	15:37:14
10	A. Yes.	15:37:14
11	Q. In what context?	15:37:16
12	A. As I recall, I prepared it shortly	15:37:19
13	after I was hired.	15:37:24
14	Q. Did you give it to anyone else	15:37:26
15	in -- on your team?	15:37:28
16	A. I submitted it to Mr. Gicinto,	15:37:29
17	yes.	15:37:33
18	Q. Did he give you feedback?	15:37:34
19	A. Yeah, I mean, he thanked me for	15:37:36
20	the -- the document, and then that was about	15:37:39
21	it. I don't -- I don't recall us ever doing	15:37:43
22	anything with it.	15:37:46
23	Q. This says "Draft" on each page.	15:37:46
24	Do you recall whether there were other versions	15:37:48
25	of this document?	15:37:50

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1 A. As I recall, this was the only, 15:37:51

2 the only one I prepared, and that's why it says 15:37:54

3 draft because it never -- never went any 15:37:57

4 further. 15:37:59

5 Q. Did Mr. Gicinto ask you to prepare 15:37:59

6 this? 15:38:03

7 A. Yes. 15:38:03

8 Q. And where did the information in 15:38:03

9 this document come from? 15:38:06

10 A. Everything in this document would 15:38:10

11 have come from -- I'd have to read the -- the 15:38:12

12 whole thing. 15:38:15

13 Q. Well, let me ask a different 15:38:28

14 question. 15:38:30

15 A. Yes. 15:38:31

16 Q. If you look at the -- on the 15:38:32

17 second page -- 15:38:35

18 A. Right. 15:38:35

19 Q. -- it says "Collection strategy." 15:38:36

20 And what's that intended to convey? 15:38:37

21 A. Collection strategy. 15:38:48

22 [Pause.] 15:38:48

23 A. The whole -- it's intended to 15:39:13

24 convey just that, how we would do our research 15:39:15

25 into the various competitors. 15:39:19

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1	A.	Yes.	15:45:54
2	Q.	And when was -- you said you wrote	15:45:55
3		this document shortly after you joined Uber;	15:46:02
4		correct?	15:46:04
5	A.	Yes.	15:46:05
6	Q.	And then how did you know that the	15:46:05
7		number one collection objective would be to	15:46:07
8		collect information about Google? What led you	15:46:12
9		to write this?	15:46:15
10	A.	That was conveyed to me by	15:46:16
11		Mr. Gicinto. As I understand it, it was	15:46:18
12		conveyed to him by either Mr. Henley and/or	15:46:19
13		Mr. Sullivan.	15:46:22
14	Q.	And then under that heading of	15:46:23
15		Giraffe, it says:	15:46:26
16		"What original equipment	15:46:28
17		manufacturers (OEM)" --	15:46:29
18	A.	Yeah.	15:46:29
19	Q.	-- "is Giraffe partnering with?"	15:46:31
20		Right?	15:46:33
21	A.	Yes.	15:46:33
22	Q.	Did you ever obtain any	15:46:33
23		information about that?	15:46:35
24	A.	No. Beyond knowing Velodyne was	15:46:36
25		one of their suppliers, I don't recall	15:46:41

1 a part in that, yeah. 15:49:25

2 Q. Sitting here today, you don't 15:49:27

3 recall whether you ever did that with respect 15:49:28

4 to Google or Waymo? 15:49:30

5 A. I honestly do not. 15:49:31

6 Q. It says: 15:49:37

7 "Map the human terrain around each 15:49:38

8 of the key personalities in the AV program." 15:49:41

9 A. Right. 15:49:44

10 Q. What does that mean? 15:49:44

11 A. In short, if -- if you identify a 15:49:45

12 key person in a program, then who are their key 15:49:47

13 people around -- around them? Who -- who 15:49:51

14 are -- who's their circle of folks they rely 15:49:53

15 upon? 15:49:56

16 Q. Was that ever done? 15:50:03

17 A. No, I don't recall ever doing 15:50:05

18 that. 15:50:10

19 Q. So it looks like a lot of these 15:50:11

20 collection objectives for Google were never 15:50:13

21 met. 15:50:16

22 A. Correct. 15:50:17

23 Q. Were the collection objectives 15:50:26

24 with respect to Google modified at all or -- 15:50:27

25 with respect to Waymo after the time that you 15:50:30

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1	Q.	Under -- this is describing in	15:51:54
2		more detail the collection plan; right?	15:51:57
3	A.	Yes.	15:51:57
4	Q.	And if you look at the next to	15:52:01
5		last paragraph on that page, it says:	15:52:03
6		"To succeed, our collection plan	15:52:05
7		must be both broad and deep. It must be broad	15:52:08
8		enough to develop streams of reporting on at	15:52:10
9		least six different competitors."	15:52:12
10		Right?	15:52:13
11	A.	Yes.	15:52:13
12	Q.	And then the next sentence says:	15:52:16
13		"And the plan must be deep enough	15:52:19
14		to acquire in a timely manner meaningful	15:52:21
15		technical data and to identify legitimate	15:52:25
16		milestones on the road to AV Level 5."	15:52:28
17		Do you see that?	15:52:31
18	A.	I do.	15:52:32
19	Q.	What was the technical data that	15:52:33
20		was sought that's referenced here?	15:52:35
21	A.	When this was written, this was	15:52:38
22		purely conceptual. Again, I'm not a technical	15:52:41
23		guy. So conceptually it would be, you know,	15:52:45
24		that technical data that's important to the	15:52:47
25		programs.	15:52:52

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1	Q.	Okay.	15:52:55
2		And do you know if any such	15:52:55
3		technical data was ultimately obtained?	15:52:56
4	A.	No, no.	15:52:58
5	Q.	You don't know, or -- or is the	15:52:59
6		answer no?	15:53:01
7	A.	Well, I guess the answer is	15:53:06
8		twofold. I don't know, but I know I never did	15:53:07
9		it and our team never did it.	15:53:10
10	Q.	If you go to the next page, it	15:53:12
11		says:	15:53:14
12		"Two-Pronged Collection"	15:53:16
13	A.	Yes.	15:53:16
14	Q.	Under Prong One:	15:53:18
15		"Establish and Maintain the	15:53:20
16		Baseline"	15:53:21
17		Right?	15:53:22
18	A.	Uh-huh.	15:53:23
19	Q.	And then if you look at -- number	15:53:23
20		1 says:	15:53:25
21		"Open Source Research"	15:53:26
22	A.	Uh-huh, yes.	15:53:27
23	Q.	And then number 2 says:	15:53:28
24		"Internal Resources"	15:53:32
25		Number 2.	15:53:33

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1 And -- so you're -- what you're 15:54:40
2 saying -- we talked about Iden earlier; 15:54:40
3 correct? 15:54:43

4 A. Right, yep. 15:54:43

5 Q. And you had said that you believed 15:54:43
6 all of these Idens, C, D, E, F, G and H, were 15:54:45
7 [REDACTED] competitors? 15:54:53

8 A. There were other competitors. I 15:54:55
9 believe the majority of them were [REDACTED], yes. 15:54:57

10 Q. But what you're saying here is 15:55:00
11 that Iden I and Iden J are -- are 15:55:01
12 identifications of the ATG group at Uber -- 15:55:06

13 A. Uh-huh. 15:55:11

14 Q. -- and the Otto company -- 15:55:12

15 A. Right. 15:55:12

16 Q. -- respectively; is that right? 15:55:14

17 A. Yes. 15:55:16

18 Q. And then it says: 15:55:21

19 "The purpose of these meetings 15:55:22
20 will be to gather assessment on the claims of 15:55:23
21 competitors as to their progress in the AV 15:55:25
22 race" -- 15:55:27

23 A. Right. 15:55:27

24 Q. -- "and then to identify which 15:55:27
25 specific techniques and technologies are likely 15:55:29

1 to lead to success and which are red herrings." 15:55:32

2 Do you know if this was done? 15:55:34

3 A. It was not done. 15:55:35

4 Q. Do you know why? 15:55:36

5 A. Yeah. Again, this, this document 15:55:38

6 I prepared at Mr. Gicinto's request last year. 15:55:41

7 It was conceptual in nature, and most of what's 15:55:46

8 in here we never did. We didn't actually make 15:55:50

9 any kind of concerted effort until after the 15:55:56

10 meeting with -- with Mr. Ron, and that's when 15:55:58

11 those requirements came in. 15:56:00

12 Q. Do you see that after internal 15:56:07

13 resources, there's a little asterisk? 15:56:09

14 A. Internal resources, little 15:56:09

15 asterisk. Yes. 15:56:14

16 Q. I'm looking at page 626. 15:56:15

17 A. Yes. 15:56:17

18 Q. Okay. 15:56:17

19 And does that asterisk refer to 15:56:17

20 what's on page 628, the asterisk there, the 15:56:19

21 note? 15:56:23

22 A. Yes. 15:56:35

23 Q. Okay. 15:56:35

24 And is what's being conveyed here 15:56:44

25 that when you're meeting with some of the 15:56:47

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1 employer? 16:01:45

2 A. We never did it, so the question 16:01:46

3 is hypothetical. But, of course, it would have 16:01:47

4 mattered. 16:01:49

5 Q. Well, you were suggesting that 16:01:49

6 that's one thing that should be done here in 16:01:51

7 this document; right? 16:01:53

8 A. That could be done, sure. 16:01:54

9 Q. Okay. 16:01:54

10 And did you discuss that with 16:01:56

11 Mr. Gicinto? 16:01:58

12 A. I don't recall having that 16:02:02

13 discussion with him specifically, no. 16:02:04

14 Q. All right. 16:02:04

15 Do you recall having a discussion 16:02:08

16 with anyone in your group? 16:02:11

17 A. About that? 16:02:12

18 Q. Yes. 16:02:12

19 A. No. Again, I prepared this 16:02:14

20 document and shared it with Mr. Gicinto. 16:02:15

21 Essentially, I mean, it never really went 16:02:19

22 anywhere. We never ended up doing or executing 16:02:21

23 any of this. 16:02:25

24 Q. Well, you executed some of it? 16:02:27

25 A. Some of it, yes. 16:02:28

C E R T I F I C A T E

I, PAUL J. FREDERICKSON, CA
Certified Shorthand Reporter No. 13164 and
WA Certified Court Reporter No. 2419, do
hereby certify:

That prior to being examined,
the witness named in the foregoing
deposition was by me duly sworn or affirmed
to testify to the truth, the whole truth and
nothing but the truth;

That said deposition was taken
down by me in shorthand at the time and
place therein named, and thereafter reduced
to print by means of computer-aided
transcription; and the same is a true,
correct and complete transcript of said
proceedings.

I further certify that I am not
interested in the outcome of the action.

1 Witness my hand this 21st day
2 of December 2017.

3
4 
5

6 PAUL J. FREDERICKSON, CCR, CSR

7 WA CCR 2419 CA CSR 13164

8 Expiration date: March 31, 2018
9